APPEAL NO. 030962
FILED JUNE 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on April 3, 2003. The hearing officer determined that an impairment rating (IR) and a maximum medical improvement (MMI) date cannot be determined at this time, and that an "interlocutory order of October 2, 2001 cannot be overturned without a valid MMI date."

The appellant (carrier) appealed, asserting that the designated doctor's MMI date and 0% IR had presumptive weight, was not contrary to the great weight of other medical evidence, was supported by the carrier's required medical examination (RME) doctor's report, and that the designated doctor had properly rated the entire injury. The respondent (claimant) responds, urging affirmance and arguing that the designated doctor had not rated the entire compensable injury.

DECISION

Affirmed.

It appears undisputed that the claimant sustained a compensable low back and left inguinal hernia in a lifting incident on _____. The hernia was surgically repaired and does not seem to be at issue. The parties agree that the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) are appropriate. The carrier's RME doctor certified the claimant at MMI on September 14, 2001, with a 0% IR. He found the claimant's lumbosacral strain had resolved and that the claimant's "degenerative disc disease is certainly pre-existent to the injury on _____." This rating was disputed and Dr. B was appointed as the designated doctor.

Dr. B's initial report of October 16, 2001, agreed with the RME doctor's assessment of a September 14, 2001, MMI date and 0% IR. Dr. B rated the claimant with 0% impairment from Table 49, Section II A, invalidated ROM and found no evidence of neurological compromise. Dr. B agreed with the RME doctor that the "degenerative changes noted on the lumbar MRI were pre-existent and not related to the compensable injury" citing an Appeals Panel decision. The treating doctor disagreed with the designated doctor and the treating doctor's report was sent to Dr. B. In a response dated March 8, 2002, Dr. B confirmed his initial assessment, again citing Appeals Panel decisions and stating that the degenerative changes noted on a lumbar MRI were preexistent and not related to the compensable injury. The Texas Workers' Compensation Commission (Commission) again wrote Dr. B by letter of February 2003, advising him "that the claimant's lumbar injury is not in dispute," enclosing diagnostic testing and the treating doctor's report. Dr. B responded referring to the claimant's "'alleged' injury," therapy and interventional procedures (claimant had received at least

three lumbar epidural steroid injections) arguing that the degenerative changes were not compensable repeating his prior arguments.

The treating doctor in a report dated March 18, 2003, argued that the "10-16-01" MMI date of Dr. B was incorrect, suggesting that MMI should be "statutory [MMI]" and assessing a 12% IR based on "7% impairment of the lumbar spine and 5% hernia impairment." The hearing officer comments that the treating doctor's report cannot be used because "he failed to submit a [Report of Medical Evaluation (TWCC-69)]." We would also note that he failed to assess an MMI date.

The hearing officer comments at some length on the designated doctor's reports noting the rating from Table 49, Section II A of an unoperated soft tissue lesion with no residual as being "clearly not true." The hearing officer further commented:

> Claimant had documented spasms in the lumbar spine for over a year. Category II B would be appropriate if Claimant had minimal degenerative changes. Claimant's treating doctor states that Claimant falls within Category II C, with moderate to severe degenerative changes. Based on the reports in evidence, such conclusion is a reasonable one.

The hearing officer found that Dr. B failed to award a rating for specific disorders of the lumbar spine and therefore, the rating was not in accordance with the AMA Guides. The hearing officer also commented that another designated doctor should be appointed by the Commission to assess an MMI date and IR.

The carrier argues that the designated doctor's report should not be rejected absent a substantial basis for doing so. We agree, and further note that whenever a hearing officer rejects a designated doctor's report the hearing officer should "clearly detail the evidence relevant to his or her consideration." Texas Workers' Compensation Commission Appeal No. 030091-s, decided March 11, 2003. We believe the hearing officer has done so in this case where the medical evidence clearly documents more than six months of medically documented pain. Even though the designated doctor was told that "the claimant's lumbar injury is not in dispute" and extent of injury was not an issue, the designated doctor refused to apply the AMA Guides on the basis that the degenerative condition was preexisting.

We conclude that the hearing officer's determinations are not incorrect as a matter of law and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge